**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL MISC.APPLICATION No. 934 of 2007**
**In**
**CRIMINAL MISC.APPLICATION No. 14203 of 2005**
**With**
**CRIMINAL MISC.APPLICATION No. 12919 of 2005**
**With**
**CRIMINAL MISC.APPLICATION No. 14201 of 2005**
**With**
**CRIMINAL MISC.APPLICATION No. 8859 of 2006**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**CHANDULAL MAGANLAL SEVAK & 2 - Applicant(s)**
**Versus**
**STATE OF GUJARAT & 7 - Respondent(s)**

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**Appearance :**
PARTY-IN-PERSON for Applicant(s) : 1 - 3.
MR AY KOGJE, APP, for Respondent(s) : 1,
Mr Samir J. Dave for respondent No.2 in Cr.M.A. Nos.12919 and 14201 of 2005.

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 10/05/2007**

**CAV JUDGMENT**

The applicant is common in these applications and has appeared in person.

2. The applicant is facing certain criminal prosecutions. He has also lodged criminal complaints against certain persons. He has filed Criminal Misc. Application No.12919 of 2005 seeking transfer of certain criminal cases pending against him before the Sessions Court, Una. In the said application, he has specifically referred to criminal case bearing C.R.No.3286 of 1999 filed on 16.10.99 by is wife alleging offences punishable under sections 323, 504, 5606(2) of the Indian Penal Code read with section 135 of the Bombay Police Act.

Criminal Misc. Application No.14201 of 2005 has been filed by him for transfer of Sessions Case No.306/98 pending before the Competent court at Una. In both these applications, prayer of the applicant is that the cases be transferred from Una to any other Court at Godhra, Nadiad or Vadodara. It is the case of the applicant that at Una he faces serious physical threat.

The applicant had filed Criminal Misc. Application No.14203/05 seeking transfer of criminal case being Sessions Case No.17/01. The said

application came to be disposed by the learned single Judge of this Court by an order dated 20th December 2006 stating that :

> "This application has been filed praying to transfer the Sessions case No.17/01 pending in the court of Nadiad to Vadodara. Though the matter has been filed in the year 2005, the same has not been moved for a period of one year. Apart from that no proper reasons are given for transfer of the case. No hardship which may be caused to the petitioners are shown. Hence this application is dismissed."

The petitioner has, therefore, filed Criminal Misc. Application No.934 of 2007 seeking restoration of Criminal Misc. Application No.14203 of 2005.

The petitioner had also filed Criminal Misc. Application No.1191 of 2006 seeking transfer of criminal case arising out of complaint bearing C.R.No.I-219/01 from the court of Sessions at Una to Sessions Court at Godhra. His application came to be dismissed by the learned single of this Court by an order dated 15.6.2006 in following terms:

> Rule. Ms. Manisha Shah, learned Additional Public Prosecutor waives service of rule on behalf of State.
>
> This application is filed by the party-in-person seeking transfer of the case which is pending in the Court of Una. The case is arising from the offence registered at CR No.I-219 of 2001 with

> Una Police Station pending in the Court of Sessions at Una to the Court of Sessions, Godhra at Panchmahal. In support of his prayer, several averments have been made in the application as well as number of documents have been produced before this Court. The matter has been listed for hearing on number of occasions and the noting of the Farad shows that party-in-person has not remained present on last four dates, on which the matter was fixed for hearing. Today also he is absent. It, therefore, appears that the party-in-person is not interested in prosecuting this case. It also appears that the last date of hearing before the Una Court was 19/10/2005 nothing has been stated about what happened thereafter. In view of the same, it is difficult for this Court to hear the party-in-person. Hence, this application is rejected. Rule is discharged."

The applicant has, therefore, moved Criminal Misc. Application No.8859 of 2006 seeking restoration of Criminal Misc. Application No.1191 of 2006.

3. All these applications were heard together. In addition to hearing the party-in-person, I have also heard learned advocate Shri Samir Dave appearing for the private respondents and learned APP Shri Kogje for the State.

4. The case of the applicant herein is that he has in the past faced serious physical threat while attending to the said court cases. He fears for his life and safety of his family if he is required to attend to the criminal cases at Una. He has narrated certain past instances wherein he had faced assault and physical harm at the hands of some of the accused

persons as well as other residents of the locality. In short, it is his case that if these criminal cases are not transferred from Una, there would be serious threat to his life. The applicant party-in-person has further submitted that in the interest of justice, it is necessary that all these cases should be transferred out of Una.

5. On the other hand, learned advocate Shri Dave appearing for the private respondents opposed the applications submitting that the petitioner himself is involved in serious offences punishable under section 302 and 307 of the Indian Penal Code and these applications are filed only to delay the criminal trial. Placing reliance on the decision of the learned single Judge of this Court in the case of **Laxmanbhai Khumaji Barot v. Balubhai Parshottambhai,** 22 GLR 201, the learned advocate submitted that the applicant has not made out any case to demonstrate that fair trial would not be conducted in Una.

6. Learned APP Shri Kogje has also opposed the petition and submitted that there is no danger to the safety of the applicant and all necessary police protection would be provided as and when required. Learned APP has relied on an affidavit dated 11th October, 2006 filed by the State in Criminal Misc. Application No.12919 of 2005. In the said affidavit, it is stated that the State is ready to provide advocate police protection to the applicant for

attending to the said criminal trial if there is any threat to him. It is stated that if the cases are transferred to other places, the witnesses may find it difficult to attend the Court. Learned APP Shri Kogje further submitted that there are large number of witnesses to be examined by the prosecution in the criminal cases and such witnesses are residing in or around Una. It would, therefore, be not convenient to shift the trial outside Una.

7. Having heard the party-in-person and the appearing advocates, it may be noted that the learned single Judge of this Court disposed of Criminal Misc. Application No.14203 of 2005 on 20th December 2006 by passing an order on merits. There is nothing on record to suggest that the applicant herein was absent when the Court passed the said order. In any case, from the order which is reproduced hereinabove, it is clear that the said application was dismissed on merits. That being so, there is no question of restoration of the said Criminal Misc. Application. Criminal Misc. Application No.934 of 2007 which seeks restoration of Criminal Misc. Application No.14203 of 2005, therefore, must fail.

8. From the order dated 15.6.2006 passed by the learned single Judge in Criminal Misc. Application No.1191 of 2006, it can be seen that the same was dismissed for want of presence of the applicant. That being so, taking into account the reasons stated in Criminal Misc. Application No.8859 of 2006, the

order dated 15.6.2006 is required to be recalled and Criminal Misc. Application No.1191 of 2006 is required to be restored to file by allowing Criminal Misc. Application No.8859 of 2006.

9. Coming to the question of transfer of pending criminal cases at Una, I find that the applicant has not made out any such case. There may have been some unpleasant and even ugly instances in the past in connection with the rivalry between the family of the applicant and the residents of the locality at Una, nevertheless the State has assured full police protection to the applicant and his family members. In view of the fact that criminal cases are pending since long and are being delayed on account of various litigations initiated by the applicant as also considering that large number of witnesses coming from Una and around have to be examined during the course of the trial, I do not find that this is a fit case where powers under section 407 of the Criminal Procedure Code are required to be exercised. The apprehension of the applicant about the safety of his family and himself can be allied by making suitable observations and giving proper directions.

10. I find that the apprehension of the applicant is not entirely baseless. There is material on record to suggest that in the past untoward instances had taken place on account of the presence of the applicant and his family members in

the locality where they were earlier residing. It would, therefore, be the responsibility of the police authorities to ensure safety of the applicant and his family members whenever they are required to attend the criminal cases at Una.

11. Subject to the above observations, Criminal Misc. Application No.14201 of 2005 and Criminal Misc. Application No.12919 of 2005 are required to be disposed of.

12. In the result, Criminal Misc. Application No.934 of 2007 is rejected. Criminal Misc. Application No.8859 of 2006 is allowed in above terms. Criminal Misc. Application No.12919 of 2005 and Criminal Misc. Application No.14201 of 2005 are rejected subject to the above observations and rule therein is discharged.

(Akil Kureshi, J.)

(vjn)